

Application No. 10/718,005
Amendment "A" dated June 15, 2005
Reply to Office Action mailed December 15, 2004

REMARKS

Reconsideration and allowance of the above-identified application are now respectfully requested in view of the amendments and remarks set forth herein. Claims 1–39 are pending, wherein claim 1 has been amended and claim 13 has been cancelled.

In the first Office Action, the Examiner objected to Claim 10 and rejected claims 1–39. Applicant will address the Examiner's objections and rejections in the order set forth by the Examiner in the first Office Action.

The Examiner objected to claim 10 on the basis that the phrase "ball" lacks positive antecedent basis. By this paper, applicant has amended claim 10 to remove the reference to "ball" and, thus, resolve the antecedent basis objection. Applicant respectfully submits that amended claim 10 is patentable over the art of record for the reasons discussed below in relation to claim 1.

The Examiner rejected claims 1–4 and 8–9 under 35 U.S.C. § 102(a) as being anticipated by *Wren* (US 2003/0148860). Reconsideration and withdrawal of this rejection is respectfully requested in light of the following comments and observations. Claim 1 recites, "a loose filler disposed within the bladder." In rejecting the claims over *Wren* the Examiner stated that *Wren* discloses a "device having a flexible bladder with a degree of curvature (30) and loose filler disposed with the bladder (18)." See Office Action at page 2.

Wren discloses a therapeutic device used to treat a subject having psychological problems. The therapeutic device is an inflatable hollow bag that has a human-like shape. The device (10) is also referred to as a "bop-bag" See ¶ [0010]. A person being treated uses the device to express their anger. See ¶ [0017]. When the patient hits the device, a return mechanism allows the device to return to its upright position. The return mechanism is described as a "weight in space 18" that "facilitates restoring device 10 to a generally upright position." See ¶ [0014]. In other words, the sand in device 10 causes device 10 to return to its upright position after it has been hit by the patient.

For the weight to cause device 10 to return to its upright position, the weight must be fixed to the bottom of the device. *Wren* teaches that the weight is placed in space 18 in the base section 17. See ¶ [0014]. While the *Wren* reference does not specifically state that the weight in space 18 is fixed with respect to the bag, the function performed by the weight makes it obvious that the weight must be fixed to the base section 17. If the weight in device 10 is fixed to base

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17, then when device 10 is tipped on its side, the weight is at least partially elevated. Gravity acting on the weight causes it to tend to return to its original resting position. If the weight is fixed to the base 17, the weight simultaneously causes device 10 to return to the original resting position.

In contrast, if the weight were to be loose in device 10, the weight could not cause device 10 to return to an upright position. Tipping device 10 on its side would tend to lift the weight. However, if the weight were loose, the weight would slide to a new bottom resting position. With the weight in the new location, device 10 would tend to remain in its displaced position. Since the purpose of the weight is to restore device 10 to its upright position, it follows that the weight must be fixed to base portion 17 of device 10.

Consequently *Wren* does not teach or suggest the use of a loose filler. Because *Wren* does not teach or suggest the use of a loose filler disposed in the bladder, applicant respectfully submits that claims 1-30 are allowable over the art of record.

In the Office Action, the Examiner maintains that various terms of the claims should not be given patentable weight because the terms "are purely functional in nature and do not recite any structure." See Office Action at page 2. First, many of the limitations listed by the Examiner do recite structure. For example, the phrase, "the bladder being configured and arranged to support a user exercising thereon when said bladder is inflated" describes the bladder. Also, the phrase "the filler being configured to move with respect to the bladder when the bladder is moved" describes the filler. The bladder and the filler are both structural elements, thus these phrases clearly describe structure.

Moreover, the Applicant refers the Examiner to MPEP § 2173.05(g), which states, "[a] functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." The Applicant requests that the Examiner consider the above mentioned functional limitations for what they fairly convey to a person of ordinary skill in the pertinent art as used in the pending claims.

The Examiner rejected claims 5-7 and 11-39 under 35 U.S.C § 103(a) as being obvious over *Wren*. Included in the forgoing rejected claims are independent claims 31 and 37. Independent claim 31 recites "a loose filler disposed within the bladder," which is the identical phrase found in claim 1 and discussed above. As discussed above, *Wren* does not disclose a

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loose filler material disposed within the bladder. Similarly, claim 37 requires "a loose particulate." *Wren* also does not disclose a loose particulate disposed within the bladder. The weight in *Wren* is not a loose filler or particulate. Rather, the weight in *Wren* is fixed to a bottom portion and functions by returning the device to an upright position.

Furthermore, there is no teaching, suggestion, or motivation to modify the device in *Wren* to have a loose filler or a loose particulate disposed in the bladder. Rather, placing a loose filler or particulate in the *Wren* device would render the invention in *Wren* inoperable. As discussed above, if the weight in the *Wren* device were loose or if another loose filler or particulate were placed in the *Wren* device, the loose weight, filler, or particulate would tend to prevent the restoration of the device to an upright position. Since the purpose of the weight in the *Wren* device is to restore the device to its upright position, a modification that would defeat this feature would not be obvious to one skilled in the art. Thus, for at least these reasons, claims 31 and 37 are non-obvious over *Wren*. Accordingly, applicant respectfully submits that claims 31 and 37 are allowable over the art of record.

Applicant submits that claims 2-30, 32-36, and 38-39 are patentable over *Wren* at least because they depend from one of claims 1, 31, or 37, which are patentable over *Wren*.

The specification has been amended to correct typographical errors. No new matter has been added.

In view of the foregoing amendments and remarks, applicant submits that the application is now in condition for allowance. Prompt favorable action is, therefore, courteously requested.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 15th day of June 2005.

Respectfully submitted,



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